HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1193 of 2006

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Between:

M.Suresh Kumar

……Appellant

And

Deputy Commissioner,
Endowments Department, Kurnool
and three others.

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri K.V.Subrahmanya Narusu

Counsel for Respondent Nos.1 to 3 : Government Pleader for Endowments

Counsel for Respondent No.4 : Shri V.Venugopala Rao

November 13, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 13-10-2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for quashing notice dated 29-09-2006 issued by Deputy Commissioner, Endowments, Kurnool (for short, 'the Deputy Commissioner') under Section 83 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act').

The appellant claims to be the owner of land measuring 0.14 cents comprised in Survey No.57/3 of Tirupati Town, Chittoor District. He is said to have purchased this parcel of land vide registered sale deed dated 21-10-1994. On 29-9-2006, the Deputy Commissioner issued notice under Section 83(2) of the Act and called upon the appellant to show cause as to why an order requiring him to remove the encroachment made by him on 0.14 cents land comprised in Survey No.57/3 should not be passed. The appellant challenged the notice in Writ Petition No.21271 of 2006 by asserting that in view of order dated 24-4-1997 passed by the Division Bench in Writ Petition Nos.25862 and 28785 of 1995, he cannot be treated as an encroacher. He averred that after disposal of Writ Petition Nos.25862 and 28785 of 1995, respondent No.4 had filed 28 suits in the Court of Additional Senior Civil Judge, Tirupati for eviction of the alleged unauthorized encroachers. In one of the suits, which stands registered as O.S.No.70 of 1998, he has been impleaded as 9th defendant. According to the appellant, by suppressing the factum of pending suits, respondent No.4 filed a complaint under Section 83(1) of the Act, which led to the issue of notice dated 29-9-2006. He pleaded that the

Deputy Commissioner does not have the jurisdiction to initiate proceedings under Section 83 of the Act and, therefore, the impugned notice should be quashed.

The learned Single Judge dismissed the writ petition by observing that the pendency of the civil suits does not operate as a bar to the initiation of proceedings under Section 83 of the Act and the Deputy Commissioner, who has the exclusive power, authority and jurisdiction to deal with the issues relating to encroachment of land belonging to religious and charitable institutions, is entitled to pass appropriate order. The learned Single Judge held that the Deputy Commissioner has the jurisdiction to determine whether the property in dispute is, in fact, an endowment property and till the matter is adjudicated by him, there is no warrant for exercise of power by this Court under Article 226 of the Constitution.

We have heard Shri K.V.Subrahmanya Narusu, learned counsel for the appellant, learned Government Pleader for Endowments and Shri V.Venugopala Rao, learned counsel for respondent No.4 and perused the record.

In our opinion, the writ petition filed by the appellant was liable to be dismissed as premature because it was directed against the show cause notice and the learned Single Judge ought not to have adjudicated on the merits and demerits of the case set up by the appellant.

Section 83 of the Act contains the procedure for removal of encroachment of land or building belonging to a charitable or religious institution or endowment and eviction of the encroacher. Sub-section (1) of Section 83 envisages initiation of action at the instance of Assistance Commissioner. He can, either suo muto or on receipt of complaint made by the trustee, report the fact with relevant particulars

to the Deputy Commissioner having jurisdiction over the division in which the institution or endowment is situated. Sub-section (2) contemplates issue of notice by the Deputy Commissioner to the alleged encroacher requiring him to remove the encroachment. Sub-section (4) postulates that the Deputy Commissioner shall, after considering the objections, if any, raised by the alleged encroacher and making such enquiry as may be prescribed, pass appropriate order. If the Deputy Commissioner is satisfied that the noticee has made encroachment on land, building etcetera belonging to charitable or religious institution or endowment, then he can pass order for removal of encroachment and delivery of possession etcetera to the trustee of such institution or endowment.

From what we have noted above, it is clear that Section 83 is a Code in itself. It represents statutory embodiment of the rules of natural justice. Therefore, till an adjudication is made by the Deputy Commissioner on the factum of encroachment and order is made by him for removal of encroachment, no Court would ordinarily interfere with the action initiated under sub-sections (1) and (2) of the Act.

In the present case, the appellant had challenged show cause notice issued by the Deputy Commissioner on various factual and legal grounds and also pleaded that the notice was without jurisdiction. He could have taken all the grounds and objections in reply to the show cause notice and made a request to the Deputy Commissioner to decide the same. However, instead of adopting that course, he filed writ petition under Article 226 of the Constitution for quashing the show cause notice and, in our opinion, the learned Single Judge rightly refused to entertain the same. The view taken by the learned Single Judge, with whom we have expressed our agreement, is amply supported by the judgments of the Supreme Court

i n **State of U.P. v. Brahm Datt Sharma**[1], **Special Director v. Mohd.Ghulam Ghouse**[2], **State of U.P. v. Anil Kumar Ramesh Chandra Glass Works**[3], **Standard Chartered Bank v. Directorate of Enforcement**[4] and of this Court in **Special Officer, ULC v. M.Vijayalakshmi**[5].

With the above observations, the appeal is dismissed leaving the appellant free to raise all factual and legally permissible objections to the notice issued by the Deputy Commissioner.

It needs no emphasis that before finally deciding the mater, the Deputy Commissioner will consider the objections raised by the appellant and decide the same by assigning reasons. We also consider it appropriate to make it clear that the observations contained in the order of thelearned Single Judge shall not prejudice the cause of the either party.

As a sequel to dismissal of the appeal, WAMP No.2483 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

13-11-2006

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[1] AIR 1987 SC 943

[2] (2004) 3 SCC 440

[3] (2005) 11 SCC 451

[4] (2006) 4 SCC 278

[5] 1998 (6) ALT 627